

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FMIO, INC. a Michigan corporation and
RICHARD A. GARST,
Plaintiffs,

File No: 2:09-cv-12561

v

TOWNSHIP OF SUMMERFIELD MICHIGAN, a
Michigan municipal corporation, KEVIN R. IOTT in
his official and individual capacities, TAMMY
BLEASKA in her official and individual capacities,
JOAN WIEDERHOLD, in her official and individual
capacities, DALE WAGENKNECHT in his official
and individual capacities JAMES V. SEEGER, in his
official and individual capacities, AMY REITER, in
her official and individual capacities, RICHARD
KORALESKI in his official and individual capacities,
DAVID GRUDE, in his official and individual
capacities, JOSEPH STRANGER in his official and
individual capacities, LINDA DIESING in her official
and individual capacities MICHAEL STRAHAN in his
official and individual capacities, jointly and
severally,

Defendants

Hon. BERNARD A. FRIEDMAN

**ANSWER, AFFIRMATIVE
DEFENSES AND RELIANCE ON
JURY DEMAND**

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ANSWER

Defendants, by their attorneys, Lucas Law, PC, answer the complaint of plaintiffs,

FMIO, Inc and Richard A. Garst as follows:

JURISDICTION

1. Deny the allegations in paragraph 1 through 1©.
2. Admit the allegations in paragraph 2.
3. Admit the allegations in paragraph 3.

THE PARTIES

- 4-6 Admit the allegations in paragraphs 4 through 6.
- 7 Admit that defendant Iott is the Supervisor of Summerfield Township and a resident of Monroe County, Michigan but neither admit nor deny that he is a policy making official.
- 8 Admit that defendant Bleashka is the Clerk of Summerfield Township and a resident of Monroe County, Michigan but neither admit nor deny that she is a policy making official.
- 9 Admit that defendant Wiederhold is the Treasurer of Summerfield Township and a resident of Monroe County, Michigan but neither admit nor deny that she is a policy making official.
- 10 Admit that defendant Seegert is Trustee of Summerfield Township and a resident of Monroe County, Michigan but neither admit nor deny that he is a policy making official.
- 11 Admit that defendant Reiter is the Chairperson of both the Summerfield Township Planning Commission and the Zoning Board of Appeals and is a resident of Monroe County, Michigan but neither admit nor deny that she is a policy making official.
- 12 Admit that defendant Koraleski is a member of the Summerfield Township Planning Commission and a resident of Monroe County,

Michigan but neither admit nor deny that he is a policy making official.

13 Admit that defendant Grude is a member of the Summerfield Township Planning Commission and a resident of Monroe County, Michigan but neither admit nor deny that he is a policy making official.

14 Admit that defendant Stanger is a member of the Summerfield Township Planning Commission and a resident of Monroe County, Michigan but neither admit nor deny that he is a policy making official.

15 Admit that defendant Diesing is a member of the Summerfield Township Zoning Board of Appeals and a resident of Monroe County, Michigan but neither admit nor deny that she is a policy making official.

16 Deny that defendant Mark Strahan (misidentified as Michael Strahan) is a member of the Summerfield Township Zoning Board of Appeals or that he is a policy making official but admit he is a resident of Monroe County, Michigan.

FACTUAL ALLEGATIONS

17 Admit the allegations in paragraph 17.

18 Admit the allegations in paragraph 18 as the property is zoned C1 local commercial.

19 Neither admit nor deny for the reason that defendant is without sufficient information or belief as to the truth of the allegations contained in paragraph 19.

20 Neither admit nor deny for the reason that defendant is without sufficient information or belief as to the truth of the allegations contained in paragraph 20.

- 21 Neither admit nor deny for the reason that defendant is without sufficient information or belief as to the truth of the allegations contained in paragraph 21.
- 22-24 Admit the allegations in paragraphs 22 through 24.
- 25 Neither admit nor deny the allegations in paragraph 25 for the reason that defendants are without knowledge of the date or specifics relating to the confiscation of the computer.
- 26 Admit that Nick Lucas was the Fire Chief from 1996 to March 2002 and that he is the son of Zelda Lucas. If the time period referred to in paragraph 26 falls within these dates then it is admitted as true.
- 27 Admit the allegations in paragraph 27.
- 28 Neither admit nor deny for the reason that defendant is without sufficient information or belief as to the truth of the allegations contained in paragraph 28.
- 29 There are two paragraphs numbered as 29. Defendants neither admit nor deny the allegations contained in both paragraphs numbered 29 for the reason that defendant is without sufficient information or belief as to the truth of the allegations.
- 30 Admit that the language of some of the recall petitions were approved but neither admit nor deny the remaining allegations in paragraph 30 for the reason that defendant is without sufficient information or belief as to the truth of the remaining allegations.
- 31 Admit the allegations in paragraph 31.
- 32 Neither admit nor deny for the reason that defendant is without sufficient

information or belief as to the truth of the allegations contained in paragraph 32.

33 Deny for the reason that Garst did mention LaRocca by name.

34 Deny the allegations in paragraph 34.

35-39 Admit the allegations in paragraph 35 through 39.

40 Admit that a lease was entered into on May 7, 2008 not May 4, 2008 as alleged in paragraph 40.

41-43 Deny the allegations in paragraphs 41 through 43.

44 Admit that Zelda Lucas got a personal protection order against Garst but deny the remaining allegations

45-48 Neither admit nor deny for the reason that defendant is without sufficient information or belief as to the truth of the allegations contained in paragraphs 45 through 48.

49 Neither admit nor deny for the reason that defendant is without sufficient information or belief as to the truth of the allegations contained in paragraph 49 but for further answer deny that the minutes are incorrect or that it has been an ongoing issue with the minutes.

50 Deny the allegations in paragraph 50.

51 Admit the allegations in paragraph 51.

52-53 Neither admit nor deny for the reason that defendant is without sufficient information or belief as to the truth of the allegations contained in paragraphs 52 and 53.

54 Deny the allegations in paragraph 54 for the reason that the Township never received the packet.

- 55 Neither admit nor deny for the reason that defendant is without sufficient information or belief as to the truth of the allegations contained in paragraph 55.
- 56 Deny the allegations in paragraph 56 for the reason that Reiter never received an application from Garst and Reiter advised Garst of that fact on at least one occasion.
- 57 Deny for the reason that the township never received his application.
- 58 Admit that a certified check was made payable to Summerfield Township on November 13, 2006.
- 59 Deny for the reason that no application was ever submitted that could be misplaced.
- 60 Deny the allegations in paragraph 60.
- 61 Deny the allegations in paragraph 61.
- 62 Admit that defendant Iott told Garst he had to submit the plans and check but deny that Iott told Garst that this would be a re-submission since Garst had never submitted the plans in the first instance.
- 63 Deny the allegations in paragraph 63.
- 64 Neither admit nor deny for the reason that defendant is without sufficient information or belief as to the truth of the allegations contained in paragraph 64.
- 65-66 Deny the allegations in paragraphs 65 through 66.
- 67-69 Admit the allegations in paragraphs 67 through 69.
- 70 Admit that there was no written complaint and no notice was posted but for further answer state that the ordinance does not require a written

complaint.

- 71 Admit the allegations in paragraph 71.
- 72 Admit the allegations in paragraph 72 but for further answer state that Garst was given time to address the Township Board regarding the dangerous building violation.
- 73 Admit that Garst asked about the FMIO site plan review application and Garst was told that the issue of his purposed application was not on the agenda.
- 74 Deny the allegations in paragraph 74.
- 75 Admit that Garst made comments about a trucking business but neither admit nor deny the remaining allegations contained in paragraph 75.
- 76 Admit that Garst made such allegations at the meeting but deny the truth of the allegations.
- 77 Deny the allegations in paragraph 77 as untrue.
- 78 Deny the allegations in paragraph 78.
- 79 Deny for the reason that not all the persons listed were present.
- 80 Deny the allegations in paragraph 80.
- 81-83 Admit the allegations in paragraphs 81 through 83.
- 84 Admit that those present left plaintiff's property but deny the remaining allegations.
- 85 Admit that Garst's property is the first property that enforcement actions have been taken against under the dangerous building ordinance for the reason that the dangerous building ordinance has only recently been adopted.

86 Admit a meeting was held on April 29, 2009 to discuss various issues.

87 Admit the allegations in paragraph 87.

88 Admit that no notice of a special township meeting was posted for the reason that there was no special meeting of the township board.

89 Admit that a memo was drafted to Garst to determine whether there was any interest in negotiating a settlement of the various claims of the parties including the site plan and dangerous building matters. This was nothing more than an effort to determine if a negotiated settlement would be possible and was not an official act of the Township nor were terms contained therein binding on the Township.

90-99 Admit the allegations in paragraphs 90 through 99.

100-104 Deny the allegations in paragraphs 100 through 104.

105 Neither admit nor deny as paragraph 105 is not an allegation of fact but a statement of law.

106-109 Deny the allegations in paragraphs 106-109.

WHEREFORE, defendants, pray this court dismiss the complaint and award them costs and attorney fees.

COUNT I
Claims Under 42 U.S.C. §1983

110 Incorporate by reference paragraphs 1 through 109.

111-120 Deny the allegations in paragraphs 111 through 120.

WHEREFORE, defendants, pray this court dismiss the complaint and award them costs and attorney fees.

COUNT II
Violation of 42 U.S.C. §1985(3)

121 Incorporate by reference paragraphs 1 through 121.

122-126 Deny the allegations in paragraphs 122 through 126.

WHEREFORE, defendants, pray this court dismiss the complaint and award them costs and attorney fees.

COUNT III
Violation of 42 U.S.C. §1986

127 Incorporate by reference paragraphs 1 through 126.

128-131 Deny the allegations in paragraphs 128 through 131.

WHEREFORE, defendants, pray this court dismiss the complaint and award them costs and attorney fees.

COUNT IV
Superintending Control

132 Incorporate by reference paragraphs 1 through 131.

133-136 Deny the allegations in paragraphs 133 through 136.

WHEREFORE, defendants, pray this court dismiss the complaint and award them costs and attorney fees.

COUNT V
Violation of Michigan Freedom of Information Act
MCL 15.231 et seq.

137 Incorporate by reference paragraphs 1 through 136.

138-142 Deny the allegations in paragraphs 138 through 142.

WHEREFORE, defendants, pray this court dismiss the complaint and award them costs and attorney fees.

COUNT VI
Violation of the Michigan Open Meetings Act
MCL 15.261 et seq.

143 Incorporate by reference paragraphs 1 through 142.

144-147 Deny the allegations in paragraphs 144 through 147.

WHEREFORE, defendants, pray this court dismiss the complaint and award them costs and attorney fees.

COUNT VII
Violation of Michigan Right To Farm Act
MCL 286.741 et seq.

148 Incorporate by reference paragraphs 1 through 147.

149-155 Deny the allegations in paragraphs 149 through 155 as miss numbered allegations 150 through 155.

WHEREFORE, defendants, pray this court dismiss the complaint and award them costs and attorney fees.

COUNT VIII
Defamation

156 Incorporate by reference paragraphs 1 through 155.

157-162 Deny the allegations in paragraphs 157 through 162.

WHEREFORE, defendants, pray this court dismiss the complaint and award them costs and attorney fees.

AFFIRMATIVE DEFENSES

Defendants by their attorneys, Lucas Law, PC, state the following affirmative defenses to the complaint:

1. The complaint in the above captioned cause fails to state a claim upon which relief can be granted.

2. The claims of plaintiffs are barred by the applicable statute of limitations, by the equitable doctrine of laches and unclean hands.

3. The claims of plaintiffs against defendants, are barred by the doctrine of governmental immunity. MCL 691.1401 *et seq.*, MSA 3.996 (101) *et seq.*

4. Plaintiffs have failed to exhaust all administrative remedies and hence the claims set forth in the complaint are not ripe.

5. Some or all of the damages claimed by plaintiffs are not recoverable under applicable law.

6. Plaintiffs failed to mitigate damages.

WHEREFORE, defendants, pray this court dismiss the complaint and award them costs and attorney fees.

RELIANCE ON JURY DEMAND

Defendants, demand a trial by jury in the above captioned matter and rely upon the jury fee previously paid by plaintiffs

Dated: July 30, 2009

s/Frederick Lucas
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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Cindy Victor.

s/Frederick Lucas
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